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ABSTRACT

Recent court decisions -- the Rodriguez case decided by the United States Supreme Court and the Robinson case decided by the New Jersey Supreme Court -- have raised questions about the future of educational finance reform at the State level. In Rodriguez, the Supreme Court found no constitutional basis for mandating change in the Texas system; while the New Jersey court relied on its own State Constitution to mandate change in the State. The report provides each court's rationale for its decision and suggests future trends in court decisions. (JF)

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RODRIGUEZ, ROBINSON AND SCHOOL FINANCE

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RODRIGUEZ, ROBINSON AND SCHOOL FINANCE

Introduction

Questions Without Answers

The U.S. Supreme Court's "pass" for Texas and the New Jersey Supreme Court's "fail" for New Jersey raise more questions than they answer on how states ought to fund their schools. The U.S. Supreme Court could find no constitutional basis for mandating change in the Texas system, although it recognized the need for reform. The New Jersey court found a basis for a mandate in the New Jersey constitution—but it could not define the mandate's content.

The outstanding characteristic of these two decisions in fact aside from their impact on constitutional law, is the number of points at which the courts uncovered questions which the facts presented did not answer. Generally speaking, there lies between the questions and the answers, despite a vast quantity of published data on the schools, an information gap. The information we have does not tell us much about the schools. The information gap affects three overriding issues in these cases:

1. The need for identifying what constitutes *quality in education;*
2. The need to describe accurately just what *local control* is—including the limitations placed on it by state legislation and other factors, and
3. The need to develop criteria for a *fiscally neutral* school finance system (one in which level of spending is not determined by considerations which have nothing to do with education).

The argument in these suits is similar to that in the landmark 1971 decision of the California Supreme Court in *Serrano vs. Priest.* They maintain that the level of school district spending—despite the impact of state and federal aid—is being determined by the amount of assessed valuation (the value for tax purposes of real property) per pupil in each school

district. Although there is no logical connection between the wealth of a district's tax base and the educational needs of its children, the level of wealth determines the quality of a district's schools (which these suits implicitly define by level of spending).

State government, which is responsible for the educational system, has delegated both operational and fiscal responsibility to local units of government--local school districts, created for this specific purpose. This system results in very high levels of spending in some districts and very low levels in other districts Children in property-poor districts wind up in low-quality schools the argument continues and they are therefore unfairly discriminated against. The intent of the suits brought in these cases was the equalization of educational opportunity and "fiscal neutrality," or the elimination of the "fiscal bias" arising from the dependence of school district spending on the local property wealth.

This paper:

1. Summarizes the decision of the U.S. Supreme Court in *San Antonio Independent School District vs. Rodriguez* and that of the Supreme Court of New Jersey in *Robinson vs. Cahill;*
2. Examines the concerns about information expressed in these decisions,
3. Explores the questions arising from the decisions and
4. Suggests alternatives aimed at closing the information gap.

The Decisions

The Complaint Against Texas

Rodriguez claimed that the Texas system discriminates against "school children throughout the state who are members of minority groups or who are poor and reside in school districts having a low property tax base." It was claimed that this discrimination violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Texas pays about 50 per cent of school costs, 40 per cent comes from local funds, with the remaining 10 per cent coming from federal funds. The state and local funds for the Texas schools are raised through a funding system which consists of two elements. The first element, the Texas Minimum Foundation School Program (MFSP), is a state aid program intended to provide a basic educational program in every school. It is made up of 80 per cent state funds and 20 per cent local funds the latter raised through a local property tax. The second element is a supplementary local real property tax.

The case compares the Edgewood Independent School District (I.S.D.) with the Alamo Heights I.S.D., the least affluent and most affluent districts respectively, in the San Antonio metropolitan area. In 1967-68, Edgewood spent $356 per pupil with its local, state and federal funds, Alamo Heights spent $594.

The U.S. District Court for the Western District of Texas had ruled the system unconstitutional. It held that the Texas system "discriminates on the basis of wealth," that "wealth" is a "suspect" classification and that education is a "fundamental" interest protected by the U.S. Constitution; it found that Texas could show neither a "compelling state interest" for its system nor a reasonable basis for the classification used in the system.

The High Court's Reasoning

The Supreme Court identified two questions as central in Rodriguez. The first question is whether or not the Texas school finance system discriminates against a "suspect" or disadvantaged class in providing a constitutionally protected or "fundamental" right and therefore requires "strict judicial scrutiny." The second question, which arises if both parts of the first question are answered in the negative, is whether the Texas system "rationally furthers some legitimate, articulated state purpose." If education is deemed a constitutionally protected right, the Texas system of school finance would be subject to close examination of the fit between means and end; if education is not so protected, the court would simply determine whether any justification at all could be found for the state's choice of means.

In considering the first question, the majority opinion by Justice Powell found that neither can a "disadvantaged" class be adequately identified nor can education be deemed a "fundamental" right. On the second question, the court found that the Texas Minimum Foundation School Program is reasonable because it attempts to balance two "competing forces": a "minimum statewide educational program" and "local participation."

The Supreme Court said that the District Court did not deal with certain "threshold considerations" which had to be dealt with before the question on classification and fundamentality could be handled. These "threshold considerations" are: (1) whether or not, in dealing with a fundamental right *relative* rather than *absolute* deprivation, a novel concept, is "of significant consequence," and (2) whether or not it matters that the disadvantaged "poor" cannot be identified clearly as a class.

It noted that the "suspect" classes found in preceding decisions (on voting rights and on the rights of the criminally accused) share two characteristics: they were unable to pay for a

desired benefit and they consequently suffered "absolute deprivation" of that benefit. There was no claim, in this case however that anyone was being absolutely deprived of schooling. (A key element of Justice Marshall's dissent as noted below, is his insistence that "equal protection" covers *inequality* as well as deprivation.)

On the matter of education as a fundamental right the court said first that constitutional fundamentality is not determined by social importance. To arguments which linked education to First Amendment rights and the right to vote, the court said: "We have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice." There is "no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved," the court said.

Since the court found no basis for "strict scrutiny," it examined the Texas system on the less demanding basis of whether or not there was some reasonable connection between what it was financing and how it was financing it. The court said that the Texas system seeks to safeguard two values: a *minimum state educational program* and *local participation* in decisions on the schools. The inequalities in the system come, as in other state systems, from the element of local participation. The court recognized the difficulty of balancing these conflicting interests. It decided not to strike down the particular balance chosen by the state of Texas. (The court did, however point out in a footnote that tax ceilings might provide grounds for a challenge.)

The Claim Against New Jersey

In *Robinson vs. Cahill*, the trial court had held that the New Jersey school finance system discriminates against students and taxpayers in school districts with low taxable wealth, thus violating the equal protection clauses of the U.S. and New Jersey constitutions. Local property taxes cover 67 per cent of the operating costs of the New Jersey schools with 28 per cent coming from state aid and 5 per cent from federal aid. The New Jersey Supreme Court accepted the U.S. Supreme Court's reasoning in Rodriguez which denied 14th Amendment protection to education. After noting that the equal protection clause of the New Jersey constitution could conceivably be more demanding than that of the federal constitution, the New Jersey court found that as far as education was concerned, it was in fact not more demanding.

In an argument similar to that used by Justice Powell the court reasoned that a ruling under the state equal protection clause would be "unmanageable." It noted that such a stand

would draw into question "the basic tenet of local government that there be local authority with concomitant fiscal responsibility." It would produce a fundamental change in the state's political structure.

The New Jersey court based its finding of unconstitutionality on a very explicit paragraph in Article VIII of the New Jersey constitution which says:

> The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years.

Noting that the lower court had ruled the New Jersey system unconstitutional "on the basis of discrepancies in dollar input per pupil," the New Jersey Supreme Court said:

> We agree. We deal with the problem in those terms because dollar input is plainly relevant and because we have been shown no other viable criterion for measuring compliance with the constitutional mandate. The constitutional mandate could not be said to be satisfied unless we were to suppose the unlikely proposition that the lowest level of dollar performance happens to coincide with the consitutional mandate and that all efforts beyond the lowest level are attributable to local decisions to do more than the state was obliged to do.

While equal dollars would obviously not automatically result in equal educational opportunity, the court said, and while other natural and environmental factors also effect the outcome, "it is nonetheless clear that there is a significant connection between the sums expended and the quality of the educational opportunity." It noted that the legislature acted on this assumption in its state aid program.

New Jersey delegated the responsibility to provide "a thorough and efficient system of free public schools," and most of the tax burden, to political subdivisions, local school districts. The court found two problems with this delegation of responsibility. First, the state never defined just what it was that the constitution required in the way of educational opportunity. Second, fiscal responsibility was turned over to subdivisions with tax bases which were already overburdened and which varied widely in wealth. It noted that "the discordant correlations between the educational needs of the school districts and their respective tax bases" suggest that a school system which relies heavily on local taxes will be neither fair nor adequate. It found that an unclear delegation of responsibility combined with unequal fiscal resources yielded an unconstitutional system. The court did not offer criteria for reform, but it did say that it would hear further arguments on whether the judiciary should order that state school funds be distributed on grounds other than those determined by the legislature, pending legislative adoption of a constitutional system.

Court Concerns About Information

The U.S. Supreme Court's Limitations

The U.S. Supreme Court, in explaining why it was limiting its review of the Texas system to the "traditional standard of review" of a challenged state action, requiring only a "rational relationship" with state purposes noted that the case was a challenge to both fiscal policy and educational policy.

Rodriguez, according to the Supreme Court decision, was a direct attack on the state's decision to delegate to its political subdivisions the power to tax local property to pay for matters of local interest. The court noted that its tradition has been to recognize that state legislatures have broad leeway in drawing up classifications for tax programs. In this case, on the contrary, the court said it was being asked either to alter the system drastically or to throw it out.

On the challenge to educational policy, the court recognized the complexity and controversy involved in developing educational policy. Three basic areas of controversy were noted: (1) the connection between dollars and quality in education, (2) the goals of education and (3) the relationship between state boards of education and local school boards. In such an unsettled area the Supreme Court declined to generate rigid constitutional restraints. It would be operating from a *lack of clear information* in imposing restrictions on the finance systems of almost every state.

Concerns of the Supreme Court

The issue on which the Supreme Court decision rested, once it had dismissed the matter of whether or not education is a constitutionally protected right, was the value of local control and participation in decisionmaking. This is a major point of disagreement between Justice Powell's majority opinion and Justice Marshall's dissent. The court also expressed concern over whether or not a "fiscally neutral" distribution would be any more fair than the existing distribution.

The value which the majority sees in local control is the opportunity it gives to a community to influence the education of its children. It includes the freedom to decide to spend more money on education, to participate in determining how the money is spent. It is a source of flexibility in tailoring programs to meet local needs. It creates the opportunity for experimentation, innovation and "healthy competition for educational excellence."

The majority opinion maintains that local school boards have a wide area of discretion.

Justice Marshall objected by saying that local control in Texas is a sham. On one hand, the state regulates "the most minute details of local education," he said. On the other hand, educational quality is determined largely by a district's taxable wealth, "a factor over which local voters can exercise no control."

Two elements in the majority's description of local control particularly demand examination: (1) the implication of *parental involvement* and (2) the *extent of local discretion.* The question of how much parental choice is involved in local school board decisions, and in decisions made in local schools and their classrooms, is one which should be examined. It would appear that there is not actually much parent involvement in what happens in schools. The second element, the extent of local discretion, should also be examined. The discretion theoretically possessed at the local level to allocate funds within a school district is limited by state mandates, by the bargaining power of teacher unions and by other factors. If local participation is as valuable as the court maintains, it may be well to find ways to make local participation, including parental influence, more meaningful.

The court was also concerned that a decision to uphold the lower court decision in *Rodriguez* would not necessarily benefit those in whose behalf the case was brought. At the same time, it recognized that the school finance systems in states generally are in need of reform. The court called for "innovative new thinking" on the methods and funding of public education to achieve higher quality and more uniform opportunity.

Concerns in Minority Opinions

Justice Marshall complained that it did not make much sense, after recognizing that the Texas school funding system is unfair, to turn the problem back to the "vagaries of the political process" which created the problem in the first place. Opposition to change has come and will continue to come from property rich districts. Actually, if the question continues to be defined as a matter of redistributing dollars, the opposition referred to by Justice Marshall will most likely continue to prevail. It is, however, conceivable that better information could change an otherwise static political equation.

Marshall argued that the Supreme Court had no basis for determining that the level of quality of education in every Texas school district is adequate, but that the majority did in fact make this determination by accepting the claim by the State of Texas that all its schools are adequate. He finds this approach "unintelligible" and maintains that "it is inequality—not some notion of gross inadequacy—of educational opportunity that raises a question of denial of equal protection of the laws." The key element for Marshall is the

"greater choice in educational planning" in a well-funded school as opposed to the lack of choice in "an underfunded school with poorer physical facilities, less experienced teachers, larger classes and a narrower range of courses."

Marshall felt that the value of local participation could conceivably justify striking a balance between the state's interest in adequate education and its interest in local education control. But he does not offer a technique for arriving at an acceptable balance because "it is apparent that the state's purported concern with local control is offered primarily as an excuse rather than as a justification for interdistrict inequality." In a separate dissent, Justice White expands this argument. He points out that it is not enough for a state to express the intention of preserving local control. The means chosen by the state must be rationally related to that objective. Theoretical local control in school districts must be accompanied by local fiscal capacity, he says, if local control is to have any practical meaning.

Questions Arising From the Decisions

Questions Without Answers

The many questions raised in *Rodriguez* and in *Robinson* for which the courts could find no adequate answers, provide some direction toward developing a profile of information needs for educational planning and policymaking at the state level. The information which both courts said they did not have is needed for sound planning and policymaking.

The reform of school finance enters a new phase with these decisions. Although the decisions were both complex, the need for information on *educational quality*, *local control* and *fiscal neutrality* is clear. The decisions lead us back from tightly drawn constitutional issues raised in the Serrano-type court cases to the broader issues involved in the general problem of school finance. But in leading us back to the problem these cases generate the possibility of the kind of change which could give us better schools than we now have—rather than simply the same kind of schools more fairly financed.

Rodriguez leads us back by declining to deal with the issue. Although the Supreme Court recognized the need for reform, two underlying reasons kept it from acting. The first reason was that it had no measure of "adequacy" of educational quality on which to base a judgment that some Texas youngsters in low-spending school districts were deprived of an education. The second was that it did not want, in a case with broad implications, to impose restraints on the delegation of powers by states, particularly since it had no clear

information on what sort of restraints were needed. The New Jersey court, although it did pass judgment on New Jersey's finance system, based its decision on negative kinds of judgments; it produced a vague mandate for change—with no sanction and no deadline. The Supreme Court said that reform is needed—but it declined any role in that reform. The New Jersey court mandated reform—but it has so far refrained from saying how or when.

A curious element in the Rodriguez case was the admission by the State of Texas that its school finance system could not withstand the kind of strict scrutiny which would apply if education were given 14th Amendment protection. The Supreme Court observed that the same was true of the school finance systems of almost every other state. It would seem that the finance system for such an important and extensive function should be closely scrutinized by state policymakers. There should be a close fit between what states are trying to do in education and the means being used to finance education. There should be some sound reason for any significant variations in spending.

The problem of school finance, however, is much broader than the interdistrict variations in spending levels and tax burdens which formed the basis for these cases. Other facets of the system should be scrutinized. There are variations in spending among schools in individual school districts. There are inequities in tax burdens within districts: among classes of property and among individual properties within classes.

The finance system's effects are, in fact, even more pervasive than this. On the revenue-raising side, the school property tax distorts urban development through "fiscal zoning," exacerbating social problems (such as racial segregation) which the schools are then expected to ameliorate. On the revenue distribution side, state finance systems often impose restraints on the educational system. They tend to reinforce existing educational practices at the expense of innovation. For example, to quality for funds, schools must report enrollment by grades and their handicapped children must often be educated in totally separate programs.

Alternatives for Closing the Information Gap

How to Get More Information on How a Lot of Money Is Spent

It is difficult to estimate how many man-hours now go into information collection in the school system, but it is certainly substantial. If the information we get now is not adequate, it may be that the most significant policy move which could be made at the present time would relate specifically to the resources devoted to information collection. The reasoning in these cases helps to specify the kind of information needed to close the information gap.

Three related focuses can be drawn from these cases: educational quality, local participation in educational decisions and fiscal neutrality. Existing school finance studies give some indication of possible directions in information collection. The following suggestions include some which could be implemented quickly and some which would require new research methods and would consequently be investments for the long run. The list does not pretend to exhaust the indications currently available from the literature. It simply selects examples.

1. *Educational Quality:*

   a. *Goals in Education:* The articulation of goals, although a controversial and changing matter, would give evaluation and accountability meaning. Goals can be defined at least to the extent of identifying the programs to be provided in the school system.

   Possible Legislative Action: Define the goals of the school system, including the specific educational programs to be provided, with enough flexibility to permit adaptation to local needs.

   b. *Evaluation of Education:* While it is difficult to devise a completely satisfactory measure of quality, it is possible to conceive of indicators of what is happening in schools which would be more precise than per-pupil expenditures at the district level and achievement test scores.

   Possible Legislative Action: Adopt criteria of quality and a process of educational assessment.

   Commission "microstudies" of the educational process aimed: (1) at explaining the statistical correlations found in large-scale studies and (2) at discovering better indexes of what is happening in the schools.

   c. *Accountability:* This question needs careful analytic treatment to sort out who is to be accountable to whom for what.

   Possible Legislative Action: Adopt a school-by-school accounting system aimed at generating a profile of school effectiveness. Adopt a program aimed at developing education-need and education-cost indexes.

2. *Local Participation:*

   a. Local control, including any limitations from state mandates and labor negotiations, should be described accurately, and a framework should be developed which can make any benefits of local participation realizable.

   Possible Legislative Action: Commission a study of the extent of discretion

exercised by local school boards over budgets, tax rate, salaries, curriculum, discipline and other relevant factors.

b. *Governance:* Criteria should be developed for educational decisionmaking which will insure effective governance, with an optimum mix of state and local control and professional and citizen control.
Possible Legislative Action: Commission proposals for simplifying education finance legislation to permit effective governance, including lay influence.

3. *Fiscal Neutrality:*

a. A new definition for a "fiscally neutral" school system: one in which decisions (choices) are not distorted by irrelevant or socially undesirable considerations.
Possible Legislative Action: Computer simulation of the full effect of changes in the revenue system—including shifts in the tax burden as well as changes in revenue distribution.

b. The concept should be applied to the local real property tax and to such external effects as fiscal zoning.
Possible Legislative Action: Regionalize the commercial and industrial property tax base; create intermediate school districts, metropolitan taxing districts or federations of school districts in metropolitan areas to provide administrative services and high-cost educational services.

c. "Fiscal neutrality" should be applied to the elements which constitute the real property tax base, that is, to real property assessment, including the assessment of commercial and industrial properties, and to the use of tax exemptions.
Possible Legislative Action: Adopt assessment improvement techniques and review exemption policies.

d. The concept of "fiscal neutrality" should be applied to the distribution mechanism for school funds and its effects on the choices made in carrying out the educational function; for example, its effects on special education programs for the handicapped, its effects on the allocation of funds for early childhood development and its effects on the range of choices available to educational practitioners (teachers, principals, psychological personnel and guidance personnel).

Possible Legislative Action: Separate excess costs of high cost educational programs from dependence on locally raised funds. Commission a study of the effect of the finance system on classroom practice.

Conclusion

The decisions in *Rodriguez* and *Robinson* emphasize the extent to which school finance decisions have been recommended, made and justified on the basis of intuition—because of a lack of information. Intuition might have been enough to create the system in the absence of more sound information. It is not likely, however, that an entrenched finance system can be replaced unless intuition is replaced by sound information. Nor is there any reason to believe that a substitute system would be an improvement, unless it is based on sound information. As Justice Powell noted in his closing remarks in *Rodriguez*, "Certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity." Even if similar cases strike down finance systems in other states on the ground of state constitutional requirements, new information is needed to provide a sound basis for alternative systems.

Although the *content* of reform is lacking in the court decisions, judicial *pressure* for reform could well follow the positive lead provided in *Robinson*. A number of school finance cases have, like *Robinson*, relied at least partially on state constitutional provisions. Decisions are expected soon in California, Michigan and Arizona. In *Serrano*, the California Supreme Court ruled the California system unconstitutional if the facts presented in the case accurately described the system; this case is now completing a trial on the facts. A rehearing is being held on a State Supreme Court decision in *Milliken vs. Green* declaring Michigan's school financing system unconstitutional. In Arizona, the *Hollins vs. Shofstall* decision overturning the Arizona system is now before the Arizona Supreme Court.

State school finance systems, which were originally reasonably equitable, have now become thoroughly pervaded with inequities. These systems have also become dysfunctional, particularly where they reinforce the use of outmoded techniques, where they impose rigidity in educational practice. The development of information on educational quality, on local control and on the effects of the fiscal system could lead to the development of criteria for a sound school finance system. The development of alternative systems could flow from this, perhaps through carefully designed experimentation.

ECS Reports on Education Finance

ECS Report No. 24 — *Understanding Education's Financial Dilemma:* The Impact of Serrano-type Court Decisions on American Education. April 1972. $1.00

ECS Report No. 31 — *A Legislator's Guide to School Finance.* February 1973. $2.00

ECS Research Brief No. 1 — *Survey of School Finance Study Commissions and Committees.* By Dr. Chris Pipho. June 1972. No Charge

ECS Research Brief No. 2 — *State School Finance and Tax-Related Constitutional Amendments.* By Dr. Chris Pipho. September 1972. No Charge

ECS Research Brief No. 3 — *Property Assessment and Exemptions: They Need Reform.* By Alan C. Stauffer. March 1973. $1.00

Reforming the Property Tax: A Look at Property Assessment and Exemptions. By Clay Allison. A summary of *Property Assessment and Exemptions: They Need Reform.* March 1973. No Charge

COMPACT, Vol. 6, No. 3 — *Education's Financial Dilemma.* $1.00

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